

REMARKS

Claims 6, 8 and 9 remain in this application. In view of these amendments and of the following remarks, Applicants submit that all the claims are now in condition for allowance.

35 U.S.C. § 102(f)

The Examiner rejects Claim 6 under 35 U.S.C. § 102(f) asserting that Applicants did not invent the claimed subject matter, as U.S. Patent Nos. 6,624,183; 6,297,236 and 6,620,822 each disclose the combination of prothioconazole with at least one of the other fungicidal compounds.

The three cited patents all belong to Bayer AG which is the assignee of the present application. While different named inventors may appear on the three patents, Applicants stress that those three patents and this application are from the same entity, and that the parent of the instant application has been allowed as U.S. Patent No. 6,306,850 with no 102(f) issue in play. Applicants will be filing a certified translation of the priority document (DE 197 16 257.6, filed on April 18, 1997) in the present case as soon as it is available. On that basis, the three U.S. patents cited by the examiner cannot be used in this case as they do not constitute prior art. If the Examiner maintains a 102(f) rejection in the face of the certified translation of the priority document, Applicants respectfully request the Examiner to telephone the undersigned to more fully discuss how the 102(f) rejection is applicable, before issuing any further office actions in the case.

Obviousness

Claims 6-9 stand rejected under 35 U.S.C. § 103(a) for asserted obviousness in view of U.S. Patent No. 3,903,090 (hereinafter "the '090 patent"). The Examiner states that although the '090 patent does not disclose the combination of prothioconazole with other fungicides, it suggests the same because it is known that the compounds used singly are effective fungicides which can be combined together and formulated with suitable extenders. Applicants argued synergy, but in Section 11 of the Advisory Action dated December 2, 2005, the Examiner rejected synergy on the basis that the claimed ratios exceeded the evidence provided in the case in the Examples.

Applicants respectfully traverse and contend that the specification as filed fully supports the claimed ranges. However to remove issues from the case and advance

prosecution of this case, Applicants have claimed the ratios that are commensurate in scope with the Examples. Applicants expressly reserve their right to pursue the broader ranges in continuing or divisional applications.

Claims 6-9 stand rejected under 35 U.S.C. § 103(a) for asserted obviousness over WO 96/16048. The Examiner states that although WO 96/16048 does not expressly disclose the combination of prothioconazole with other fungicides, it amply suggests the same as it is known that the compounds used singly are effective fungicides, that prothioconazole can be combined with other fungicides and that they can be formulated with surfactants and extenders.

All of the above arguments made by Applicants to rebut the assertion of obviousness in view of the '090 patent are applicable to and are therefore reiterated with respect to the WO 96/16048 reference.

Based on the foregoing amendments, Applicants respectfully request allowance of all pending Claims 6, 8 and 9.

Respectfully submitted,

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